IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4687 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.C. - Petitioner(s)

Versus

ROKAIYABANU D PATHAN - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

None for Respondent No(s).: 1.

MR RJ GOSWAMI for Respondent No(s).: 1 - 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 20/07/2005

ORAL JUDGMENT

1. Rule. Shri Rajesh Goswami, learned advocate waives service of rule on the respondents – legal heirs and representatives of the deceased workman.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner GSRTC has challenged the legality and validity of the judgment and award passed by the Labour Court, Himatnagar in Reference (LCH) No.105 of 1997 by which the labour court has partly allowed the said reference by directing the petitioner Corporation to pay backwages of the deceased workman for the period from 11.12.95 to 19.4.99.

3. The respondent workman was serving as Driver. It was alleged against him that he remained absent for the period between 22.1.95 to 28.2.95 and departmental inquiry was initiated against him. On conclusion of the departmental inquiry, it was held by the disciplinary authority that the charge with regard to unauthorized absentism proved and therefore, the disciplinary authority passed the order dismissing the respondent workman from services. Being aggrieved and dissatisfied with the same, the workman raised the industrial dispute which was referred to the Labour Court, Himatnagar for its adjudication being Reference (LCH) No.105 of 1997. It appears from the record that during the pendency of the aforesaid Reference, the workman died on 19th April, 1999. On appreciation of evidence and considering the fact that the workman did submit the medical report as well as the leave report on

23th January, 1995 and that the workman was not communicated with regard to not sanctioning the leave, the labour court found that the charge leveled against the deceased workman is not proved and quashed and set aside the order of dismissal passed by the disciplinary authorty. However, in view of the fact that workman has died during the pendency of the reference did not pass any order with regard to reinstatement but directed to pay wages for the period from 11-12-95 to 19-4-99 and all other consequential benefits along with other benefits available to the legal heirs of the deceased workman. Being aggrieved and dissatisfied with the same, the petitioner Corporation has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri A.M.Dagali, learned advocate appearing on behalf of the petitioner Corporation has vehemently submitted that there was no question of any pending proceeding and breach of Section-33(2)(b) of the Industrial Disputes Act and inspite of that the labuor court has held that there is breach of Section-33(2)(b) of the I.D.Act which is nothing but clear non application of mind on the part of the labour court and therefore, it is requested to allow the present special civil application. He has further submitted that leave was not sanctioned by the authority

inspite of that, he remained absent without getting the leave sanctioned and therefore, the order of dismissal was just and proper which should not have been interfered with by the labour court.

5. Shri Rajesh Goswami, learned advocate appearing on behalf of the respondents – legal heirs of the deceased workman has submitted that 21-1-1995 was being Saturday and Saturday being holiday and because of the fact that since the deceased workman was sick, report was submitted on 23-1.1995 including the the medical certificate and leave report. The deceased workman was not intimated with regard to sanctioning of the leave. Subsequently during pendency of the reference, the workman has died due to cancer. So far as the breach of Section-33(2(b) of the I.D.Act is concerned, it is fairly submitted that there was no question of breach of Section-33(2)(b) of the I.D.Act as there was no proceeding pending and therefore, the labour court has wrongly made observations with regard to breach of Section-33(2)(b) of the I.D.Act. Considering the facts and circumstances of the case, more particularly, when absent was for a period of 38 days and for that medical certificate as well as leave report was submitted on 23.1.1995, it is requested to dismiss the present special civil application.

6. Heard the learned advocates appearing on behalf of the parties.

7. Allegation against the respondent deceased workman that he was absent for the period from 22.1.95 to 28.2.95. It emerges from the record that the deceased workman did submit the medical report as well as leave report. However, the deceased workman did not care for to enquire and know whether leave is sanctioned or not. Nothing on record is produced on behalf of the petitioner before the labour court and even before the Inquiry Officer that in fact, the leave was not sanctioned. Under the circumstances and considering the facts and circumstances of the case,the order of dismissal passed by the disciplinary authority was disproportionate to the misconduct alleged and in fact, the said order should not have been passed by the disciplinary authority. Considering the fact that medical certificate / report as well as leave report were submitted on 23.1.1995 and subsequently, during pendency of reference, the workman has died, it will be just and proper to deny backwages to the extent of 25 % only so that the family members of the deceased workman can get retirement benefits and other benefits available to them. The aforesaid punishment of withholding of 25 % is only on the consideration that the deceased workman had not cared to ascertain and enquire whether his leave was sanctioned or not.

8. For the reasons stated hereinabove, the judgment and award passed by the Labuor Court, Himatnagar dated 3.8.2004 passed in Reference (LCH) No. 105 of 1997 is modified to the extent that the legal heirs and representatives of the deceased workman concerned will be entitled to 75 % of the backwages for the period from 11.12.1995 to 19.4.1999 with benefit of continuity of service and all other benefits including the retirement benefits. The petitioner corporation is directed to pay the benefits as per the present modified judgment and award and retiral benefits to the legal heirs of the deceased workman i.e respondents herein as early as possible within two months from the date of receipt of this order.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service to respondent is permitted.

[M.R.Shah, J.]

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